CONSTITUTIONAL LAW

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1956 was a singularly uneventful year in constitutional law — no significant questions of first impression were passed upon by the Supreme Court; the constitutional aspects of many cases were given more prominence in dissenting opinions than in the opinions of the majority; the year yielded no new rules on the exercise of governmental powers; issues involving fundamental rights arose more frequently in criminal cases. By far the most numerous decisions were on applications for naturalization; next in number were those involving the civil service.

In this survey these decisions will be reviewed under the headings of *Exercise of Governmental Powers; Fundamental Rights,* which will include civil, political, as well as the rights of the accused in criminal cases; *Citizenship and Naturalization;* and *Civil Service.*

EXERCISE OF GOVERNMENTAL POWERS

The government established under our Constitution operates under a system of separation of powers which, though not absolute, is well defined. The judiciary in the settlement of justiciable cases is called upon to apply and interpret the laws. In the performance of these functions the Supreme Court not only strikes down acts of the two other departments which violate the constitution but also refuses to assume functions which do not properly belong to it. This is illustrated in the now famous resolution in the application for bail which arose as an incident in the case of *People v. Hernandez.*[1] The court granted the application over the vigorous objection of the government. In the course of its resolution the rule that the courts will not inquire into the wisdom of statutes and will apply them as they are was reiterated in this manner:

> "The role of the judicial department under the Constitution is, however, clear—to settle justiceable controversies by the application of the law. And the latter must be enforced as it is—with all its flaws and defects, not affecting its validity—not as judges would have it. In other words, the courts must apply the policy of the state as set forth *in its laws,* regardless of the wisdom thereof."

Suppose the policy of the law punishing the offense does not coincide with the policy of the law enforcing agencies, should the

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[1] G.R. Nos. L-6025-26, July 18, 1956 where it was held that there is no complex crime of rebellion with murder, arson, etc. The Supreme Court voted 6 to 4 in favor of granting the application for bail.

court apply the law so as to harmonize the two different policies? The court said it was not within its power to do so, saying:

> "Such evils as may result from the failure of the policy of the law punishing the offense to dovetail with the policy of the law enforcing agencies in the apprehension and prosecution of the offenders are matters which may be brought to the attention of the departments concerned. The judicial branch cannot amend the former in order to suit the latter. The court cannot indulge in judicial legislation without violating the principle of separation of powers, and, hence, undermining the foundation of our republican system..."

FUNDAMENTAL RIGHTS

RELIGIOUS FREEDOM

The individual rights guaranteed in the Constitution are not unlimited. In the exercise of police power the state may regulate them in order that they may not be "injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society." In the case of *Ignacio v. Ela*[2] members of the Watch Tower Bible and Tract Society commonly known as Jehovah's Witnesses brought an action for mandamus to compel the mayor of a certain municipality to grant them a permit to use the public plaza together with the kiosk built on it. The mayor allowed the use of part of the plaza but not of the kiosk because he believed that the kiosk should only be used for *legal purposes* and had adopted a policy not to allow any religious denomination to use it. The petitioners contended that this action was an abridgement of the freedom of speech, assembly, and worship guaranteed by the Constitution. The Supreme Court, citing *Primicias v. Fugoso*,[3] denied the petition on the ground that the constitutional rights invoked by the petitioners are subject to regulation in the exercise of the sovereign police powers. Considering the action of the mayor, the Supreme Court said:

> "It is true that there is no law nor ordinance which expressly confers upon respondent the power to regulate the use of the public *plaza* together with its kiosk, for the purposes for which it was established, but such power may be exercised under his broad powers as chief executive in connection with his specific duty "to issue orders relating to the police or to public safety' within the municipality (section 2194, paragraph c Revised Administrative Code.) And it may even be said that the above regulations has been adopted as an implementation of the constitutional provision which prohibits any public property to be used, directly or indirectly, by any religious denomination (paragraph 3, section 23, Article VI of the Constitution.)"

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[2] G.R. No. L-6558, May 31, 1956.
[3] 45 O.G., No. 8, 3280 (1948).

The Supreme Court then proceeded to take judicial notice of certain peculiar circumstances in the case, like the proximity of the kiosk to the Roman Catholic church and the occurrence of religious controversies which disturbed the peace and order of the municipality and went on to say that the mayor had not acted capriciously in refusing the use of the kiosk.

In a vigorous dissent in which three other justices concurred, Mr. Justice Concepcion enumerated his reasons for disagreeing with the majority. The most significant of these involves the mayor's policy of not allowing the use of the kiosk not on considerations of public order but on his belief that no public property may be used for religious purposes even if there were no danger of breach of the peace. This belief according to the dissent is false because:

> "Public squares, roads, highways and buildings are devoted to public use, and, as such, are open to all, without distinction. *Incidentally to such use*, religious acts may be performed in said public property. It is the appropriation thereof *mainly* for religious purposes that the constitution does not sanction. Thus, for instance, public lands may not be donated for the construction thereon of churches, convents or seminaries. However, public streets, boulevards and thorough fares are used, almost daily, for religious processions in the Philippines. Masses and other religious services are often held at the Luneta, and the Quirino Grandstand and the Rizal Memorial Stadium, in the City of Manila, as well as in other public property, such as penal institutions, leprosaria and army camps. So long as the use of public property for religious purposes is incidental and temporary, and such as to be reasonably compatible with the use to which other members of the community are similiarly entitled, or may be authorized to make, the injunction in section 23 (3) of Article VI of the Constitution is not infringed (See Aglipay Ruiz, 64 Phil., 201; People v. Fernandez, CA-CR No. 1128-R)."

The right of the petitioners, the dissent went on to say, is one of such great magnitude that it is covered by four provisions of the constitution; the due process clause, freedom of speech, freedom of assembly, and freedom of religion. The mere possibility that the petitioners if allowed to use the kiosk in the town square, may say something that may tend to cause a disturbance was insufficient to warrant a denial.

The dissenting justices also took issue with the majority as to the propriety of taking judicial notice of certain facts not pleaded by the parties. The majority found that the policy adopted by the mayor was not capricious considering the proximity of the kiosk to the Roman Catholic church. The unrealistic nature of this consideration was pointed out by the dissent by stating that modern technology has considerably extended the range of hearing and to refuse a permit just because what may be said at the meetings may be

heard and resented by others professing different religions would mean that meetings will have to be held away from towns or populated localities.

EMINENT DOMAIN

Paragraph 2, Section 1 of Article III of the Constitution provides: "Private property shall not be taken for public use without just compensation." Two of last year's decisions involved the exercise of the power of eminent domain contemplated in this provision. One dealt with the question of "taking" and the other with "just compensation."

Clemente and Hodges v. Municipal Board of the City of Iloilo[4] involved a municipal ordinance prohibiting the construction or repair of buildings on a certain area needed by the city for street purposes. The ordinance provided a penalty for its violation and instructed the city fiscal to institute expropriation proceedings as soon as the city treasurer certified that funds for the purpose were available or deposited the same in court.

Two property owners filed an action for declaratory relief alleging that the ordinance unconstitutionally deprived them of the use and enjoyment of their property. In finding for the petitioners the Supreme Court declared that the ordinance by putting a ban on the construction or repair of buildings on the petitioners' land deprived them of the use and curtailed the enjoyment of property without just compensation and without due process of laws. The ordinance was not a legitimate exercise of eminent domain because the city had not instituted expropriation proceedings nor paid property owners just compensation. Eminent domain is not accomplished simply by the passing of an ordinance. The Supreme Court rejected the lower court's finding that the purpose of the ordinance was to warn property owners in the area affected not to introduce any "improvements which (after all) will have to be removed after expropriation proceedings shall have been decided." This view according to the Supreme Court, failed to take account of the fact that the owners would in the meantime be deprived of the use of their property without compensation and the expropriation proceedings may be long in coming. The ordinance excepting the provision directing the city fiscal to institute expropriation proceedings was declared void.

The other case[5] arose out of expropriation proceedings initiated by the government. The only question on appeal was the amount

[4] G.R. No. L-8633, April 27, 1956.
[5] Republic of the Philippines v. Narciso, G.R. No. L-6594, May 18, 1956.

of compensation to be paid. The board of commissioners appointed by the court did not agree on the price of the land taken. Two of them recommended the payment of ₱3,000 per hectare and the trial court approved this amount. One commissioner fixed the value at ₱600 a hectare. The Solicitor General complained that the price set by the lower court was excessive considering the type of land taken and the fact that its value had considerably depreciated because of the presence of dissident elements in the locality. The Supreme Court modified the award of the lower court, but in so doing said that the government could not take advantage of the unsettled conditions in the locality as a factor in determining the price of land to be expropriated otherwise all that the government will have to do to bring down the price of property sought to be condemned is to neglect its duty to maintain peace and order. There were, however, some circumstances which justified the court in decreeing that ₱2,500 per hectare was just compensation since the property owners themselves had asked for no more than ₱2,000, some of them much less. The property owners could not take advantage of the fact that land values went up after the expropriation; they could not recover damages for unearned increment resulting from the introduction of public improvements by the government after the expropriation.

RETROACTIVE TAXATION

The Constitution prohibits the enactment of *ex post facto* laws,[6] but a retroactive tax law does not come within the scope of this prohibition. Thus in *Republic v. Oasan*[7] the constitutionality of the war profits tax imposed under Republic Act No. 55 was challenged because of its retroactive character. The Supreme Court upheld its validity saying that the prohibition against *ex post facto* laws applies only to criminal or penal matters. Tax laws are not necessarily rendered unconstitutional if given retroactive application. The Court admitted that the Constitution may be transgressed if in its retroactive operation a tax law is both *harsh and oppressive*, but it found that the war profits tax law is wise and just, saying:

> ". . . The last Pacific war and the Japanese occupation of the Islands have wrough divergent effects upon the different sectors of the population. The quiet and the timid, who were afraid to go out of their homes or who refused to have any dealings with the enemy, stopped from exercising their callings or professions, losing their incomes; and they supported themselves with properties they already owned, selling these from time to time to raise funds with which to purchase their

[6] Paragraph 11, §1, Article III of the Constitution.
[7] Testate Estate of Olimpia Fernandez v. Oasan, G.R. No. L-9141, September 25, 1956.

daily needs. These were reduced to penury and want. But the bold and the daring, as well as those who were callous to the criticism of being called collaborators, engaged in trading in all forms or sorts of commodities, from foodstuffs to war materials, earning fabulous incomes and acquiring properties found themselves possessed of increased wealth because inflation set in, the currency dropped in value and properties soared in prices. It would have been unrealistic for the legislature to have ignored all these facts and circustances. After the war it could not, with Justice to all concerned apportion the expenses of government equally on those who had their properties decimated as on those who had become fabulously rich after the war. Those who were fortunate to increase their wealth during the troublous period of the war made to contribute a portion of their newly-acquired wealth for the maintenance of the government and defray its expenses. Those who in turn were reduced to penury or whose incomes suffered reductions could not be compelled to share in the expenses to the same extent as those who grew rich. This in effect is what the legislature did when it enacted the War Profits Tax Law. . . ."

RIGHTS OF THE ACCUSED

The Constitution sets out in some detail the rights of a defendant in criminal cases. Among these are the right to bail, the right to a speedy and public trial, protection against double jeopardy, etc. The individual is also protected against arrests without warrant. In a number of cases decided last year the constitutional guarantees to ensure a person a fair, impartial, and adequate hearing were invoked.

BAIL

Manigbas v. Luna[8] was a petition for mandamus against a justice of the peace to compel him to hear an application for bail. The Supreme Court while dismissing the case as premature discussed the question of whether a justice of the peace can act on an application for bail in a case involving a capital offense. Under the constitution all accused persons before conviction are entitled to bail except those charged with capital offenses when the evidence of guilt is at strong.[9] The Rules of Court provide that in non-capital offenses, after judgment by a justice of the peace and before conviction in the court of first instance an accused is entitled to bail as a matter of right; but after conviction by the court of first instance the defendant may upon application be bailed at the discretion of the court.[10] Implementing the provision of the constitution is the rule that "No person in custody for the commission of a capital offense shall be admitted to bail if the evidence of his

[8] G.R. No. L-8455, February 27, 1956.
[9] Paragraph 16, §1, Article III.
[10] §§3 & 4, Rule 110. People v. Hernandez, Note 1.

guilt is strong."[11] Justice of the peace before whom a case is initiated have authority to entertain petitions for bail in cases involving non-capital offenses in which the accused are entitled to bail as a matter of right. But the provisions of law and the constitution are not clear on whether justices of the peace can likewise entertain applications for bail in cases under their control if they involve capital offenses. The Supreme Court declared that they can, the reason being that justices of the peace as examining magistrates have power to commit and in their discretion admit to bail an accused person unless such power is limited by the Constitution or by statute. Neither the constitution nor the statutes limit this power. On the contrary the Judiciary Reorganization Act of 1948 provides that the justice of the peace may conduct preliminary investigations "*for any offense* alleged to have been committed within their resective municipalities x x x without regard to the limits of punishment, and may release, or commit and bind over any person charged with such offense to secure his appearance before the proper court."[12] Another section provides that the same justice of the peace may "require of any person arrested a bond for good behavior or to keep the peace, or for the further appearance of such person before a court of competent jurisdiction."[13] These provisions according to the Supreme Court were broad enough to confer upon justices of the peace authority to grant bail to persons accused of capital offenses.

In a dissenting opinion two justices pointed out the fact that justices of the peace are not courts of record, hence a review by certiorari in case of abuse of discretion would not be available. The limited legal experience of justices of the peace and in many cases of mayors also authorized to conduct preliminary investigations, the complete lack of such legal preparation and experience hardly qualify them for the task of appraising and weighing the evidence and resolving many legal points in the determination of whether in a case involving a capital offense, evidence of guilt is strong.

Another bail case where as constitutional right was involved arose out of a deportation proceeding.[14] The alien sought provisional release on bail pending the termination of proceedings against him. The Supreme Court upheld the order of the Deportation Board denying the application saying that the right to bail guaranteed by the constitution applies only to persons accused of criminal offenses. Deportation cases not being criminal, release on bail is a matter

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11 §6, Rule 110, Rules of Court.
12 §87.
13 §91.
14 Tiu Chun Hai and Go Tam v. Republic, G.R. No. L-10109, May 18, 1956.

of discretion on the part of the Deportation Board. Nor is the right to bail in these proceedings an element of due process. As to what constitutes due process the court went on to say:

> "Due process in deportation cases implies merely a full and fair hearing which includes the right of respondent to be heard by himself and counsel, to confront and cross-examine the opposing witnesses, and to produce witness in his behalf (Whitefield v. Hanges, 222 Feb. 745, 749). Or as stated in section 69 of the Revised Administrative Code, it only means that the person subject of deportation 'shall be informed of the charge or charges against him and (he shall be allowed not less than three days for the preparation of his defense' and shall 'have the right to be heard by himself or counsel, to produce witnesses in his own behalf, and to cross-examine the opposing witness.' "

SPEEDY TRIAL; DOUBLE JEOPARDY

An accused is guaranteed a speedy trial but where the defendant himself has agreed to several postponements of his case he cannot complain that this constitutional right has been denied. In *People v. Jabajab*[15] two separate actions for slight physical injuries were filed against the defendant. The municipal court convicted him in both cases and he appealed the decisions to the court of first instance. This was in 1952. The cases were separately set for hearing in September of that year, was postponed upon request of the parties, and after another postponement was set for hearing in June 1953. A postponement for August for reasons not appearing on the record was made and finally the two cases were scheduled to be heard on December 9, 1954. The city fiscal alleging that he had not been notified of the hearing requested another postponement, but when the cases were called for trial on that date, counsel for the defendant asked for a dismissal of the case invoking the constitutional guarantee of a speedy trial. The judge dismissed the case but finding that the defendant had not been arraigned when the two cases were filed reserved to the fiscal the right to refile them. On appeal the order of dismissal was set aside; passing upon the right to a speedy trial, the Supreme Court said:

> "It is true that a person accused has a right to a speedy trial. However, he cannot sleep on said right but must see to it that his case is tried at an early date. In the present case, there were several postponements of the hearing of his two cases but instead of objecting to the same, the defendant agreed to said postponements, and there is nothing in the record to show that it was the Fiscal who asked for all said postponements. As the Government counsel well observes, the defendant cannot agree to the repeated postponements of the trial of his cases and then when he finds the Government absent or unable to go

[15] G.R. Nos. L-9238-39, November 13, 1956.

> to trial on any of the dates of hearing take advantage of said absence and ask for the dismissal of the case. . . ."

The Court found no advantage in having the cases provisionally dismissed and reserving to the fiscal the right to refile them. This could only lead to further delays.

One point of constitutional significance not touched upon by the majority but emphasized in the concurring and the dissenting opinions is whether or not the accused had been placed in double jeopardy taking into account the fact that the justice of the peace court had convicted the defendant and that the postponements took place on appeal before the court of first instance. Mr. Justice Labrador in a brief concurring opinion said that there was no double jeopardy. The dissent is based chiefly on the objection that the defendant would be placed in double jeopardy because (1) he had been prosecuted in a court of competent jurisdiction; (2) there was a valid complaint or information; and (3) he had been arraigned and he had pleaded to the information. As a matter of fact he had been convicted by the municipal court. Although the appeal vacated the decision of the municipal court, the dissent said that did not have the effect of wiping out the "vivid facts of defendant's prosecution in a court of competent jurisdiction, upon valid complaints and of his arraignment and conviction therefor." The only effect of the appeal, according to the dissent was to make the proceedings in the court *ad quem* a continuation and extension of the proceedings in the court *a quo*. As to whether or not the failure of the defendant to plead double jeopardy could be taken as a waiver, the dissent argued that there can be no waiver of such a constitutional right and the court can pass judgment on that question.

WARRANTS OF ARREST: PROBABLE CAUSE

The Constitution provides that "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.[16] Does the issuance of a warrant of arrest involve a judicial power which necessarily imposes on the judge the legal duty of first determining whether there is probable cause, independently of the preliminary investigation made by the fiscal? In

[16] Paragraph 3, §1, Article III.

Amarga v. Abbas[17] the Supreme Court held that it does. The facts of the case show that the provincial fiscal filed an information for murder in the court of first instance, certifying under oath that he had conducted the preliminary investigation pursuant to law. The judge finding that the only affidavit supporting the information did not make a prima facie case, dismissed the information without prejudice to its reinstatement. The fiscal filed a petition for certiorari and mandamus. The Supreme Court declared that the lower court acted within its jurisdiction in requiring further evidence to show probable cause but exceeded his jurisdiction in dismissing the case. Citing the case of *United States v. Ocampo*[18] the court said that the question of whether probable cause exists or not must depend upon the judgment and discretion of the judge or magistrate issuing the warrant and that the preliminary investigation conducted by the petitioner did not dispense with the duty of the court to exercise his judicial power of determining, before issuing such warrant the existence of probable cause. The court, however said: "The Constitution vests such power in the respondent judge, who, however, may rely on the facts stated in the information filed after preliminary investigation by the prosecuting attorney."

What makes this case interesting is the thought-provoking dissent. Mr. Justice Montemayor with whom Mr. Justice Padilla agrees, maintains that the Constitutional requirement of *probable cause* refers to search warrants only and not to warrants of arrest. To support this thesis reference is made to the background of the provision and the debates in the constitutional convention, to show that the delegates were deeply concerned with the practice of search warrants on the strength of mere affidavits which later proved false. As to warrants of arrest, the dissent points out that there is no need for surrounding it with further constitutional safeguards since a person illegally arrested can sue for a writ of habeas corpus and besides, the policy of the government has always been to effect arrests quickly and easily in aid of the keeping of peace and order. Arrests can even be made without warrant in certain cases not only by peace officers but also by private individuals. As to the clause which reads "particularly describing the place to be searched and the person or thing to be seized," the dissent claims this does not necessarily mean arrest. A person may be apprehended under a search warrant not because he has committed a crime but because his possession of goods subject to the search warrant establishes

[17] G.R. No. L-8666, March 28, 1956.
[18] 18 Phil. 1, 41-42 (1910).

a prime facie connection between him and the commission of the crime which may be explained and rebutted to effect his release.

The dissenting opinion also calls attention to the fact that in the Ocampo case the Supreme Court of the United States on appeal said: "In short, the function of determining that probable cause exists for the arrest of a person accused is only *quasi judicial,* and not such that, because of its nature, must necessarily be confined to a strictly judicial officer or tribunal."[19] Also the inconsistency in the majority stand is shown in that while they lay down the rule that the determination of probable cause is judicial, still they would allow the judge to rely on the facts stated in the information filed after preliminary investigation by the prosecuting attorney. If the Constitution itself requires the judge to determine whether there is probable cause, he cannot shirk his duty by merely relying on the facts alleged in the information. For these reasons the dissent concluded that the issuance of the warrant of arrest after the corresponding information and certificate that a preliminary investigation has been conducted is mandatory on the judge.

OTHER INDIVIDUAL RIGHTS

A reiteration of previous rules was made in the cases of *Philippines Association of Labor Unions v. Barot*[20] and *Dinglasan v. Lee Bun Ting.*[21] The first case involved a writ of injunction issued against the petitioners "to immediately cease and desist from picketing respondents premises, and from molesting, interfering or preventing persons who desire to enter (certain theaters), and from committing any act of violence or intimidation against the respondent company and said persons." The injunction was issued not in accordance with the requirements of the Industrial Peace Act and made no distinction between peaceful picketing and unlawful picketing. The injunction was annulled as a denial of a fundamental right granted to employees. What may be enjoined, the Court said, is the use of violence or the act of unlawful picketing, such as the commission of acts of violence and intimidation against employees or those who want to see the shows, not lawful picketing. Doubtless the court had in mind pronouncements of our courts and those of the United States that peaceful and lawful picketing come within the guarantee of the freedom of speech and of the press.

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[19] Ocampo v. United States, 58 L. ed. 1231, 1235 (1914).
[20] G.R. No. L-9281, September 28, 1956.
[20a] G.R. No. L-5996, June 27, 1956.

Once again the court had to pass upon the effects of a sale of land made by a citizen to an alien disqualified under the Constitution to acquire it. The Supreme Court refused to reconsider the doctrine it has followed in a long line of decisions refusing the plea of the vendors for the return of their property sold in violation of the Constitution. The doctrine of *pari delicto* has been held to bar the equally guilty vendor from recovering title which he had voluntarily conveyed for a consideration. The Court once more said that it is for the legislature to lay down the policy to be followed in relation to conveyances made in violation of the Constitution.[21]

CITIZENSHIP AND NATURALIZATION

The admission to Philippines citizenship by naturalization was as jealously guarded in last year's decisions as it was in the past. An alien applying for naturalization must possess all the qualifications and none of the disqualifications enumerated in the law. He has to follow the prescribed procedure and comply with all the formalities established, else his application will be denied. The law has consistently been strictly interpreted against the applicant.

The stumbling block to many an applicant's naturalization is the provision requiring applicants to enroll their minor children of school age in a public school or in a private school recognized by the Philippine government, which teaches certain specified subjects. The Supreme Court in numerous decisions has emphasized the mandatory character of this provision.[22] In three cases last year citizenship was denied because of failure to comply with this requisite.[23] In *Yao Chun v. Republic, supra* the applicant tried to show that he had made repeated requests to the Philippine government to allow him to bring into this country his minor son, but the Supreme Court did not accept this excuse, calling attention to the circumstance that for more than ten years before the Chinese mainland fell into communist hands, the applicant had made no effort to get his son into the Philippines.

The reason for this strictness is explained by the fact that minor children automatically become citizens upon the naturalization of

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21 As of this writing a bill is pending in Congress on the disposition of land acquired by aliens from citizens contrary to the provisions of §5, Article XIII of the Constitution.

22 Ang Yee Koe Sengkee v. Republic, G.R. No. L-3868, December 27, 1951; Anglo v. Republic, G.R. No. L-5104, April 29, 1953; Quing Ku Chay v. Republic, G.R. No. L-5477, April 12, 1954; Ng Sin v. Republic, G.R. No. L-7590, September 20, 1955, etc.

23 Yap Chun v. Republic, G.R. No. L-8642, January 30, 1956; Yu Hiang v. Republic, G.R. No. L-8378, March 23, 1956; Chu Kang v. Republic, G.R. No. L-8875, July 1, 1956.

their parents. The requirement is not only a test of sincerity of motives of the applicant but also a means to educate future citizens in the institutions, customs, traditions, and history of this country.

The minor children's acquisition of citizenship is wholly dependent on the naturalization of their parent and dates only from the time the parent finally becomes a citizen. Only minor children are so affected; a child who becomes of age before the parent is allowed to take his oath of allegiance does not acquire his citizenship.[24]

A decision granting an application for naturalization does not become executory until after two years from its promulgation and only if the court after hearing is satisfied that in the intervening period the applicant (1) has not left the Philippines, (2) has dedicated himself continuously to a lawful calling, (3) has not been convicted of any offense or violation of government promulgated rules, or (4) committed any act prejudicial to the interest of the nation or contrary to any government announced policies. Before this is done the applicant cannot take his oath of allegiance.[25] It is error, therefore, for a court of first instance after hearing the petition for naturalization to declare the applicant "for all legal purposes, a Filipino citizen by naturalization."[26]

Strict compliance with the provisions of Republic Act No. 530 is essential. In *Dee Sam v. Republic*,[27] two years after his application for naturalization was granted petitioner asked the court to allow him to take his oath of allegiance. At the hearing he admitted that during the intervening period he had made a trip to Saigon and stayed there two weeks to settle the estate of his deceased father. The Supreme Court held that this absence from the Philippines violated the requirements of the law. The dictum in the previous case of *Luis v. Republic*[28] to the effect that non-absence might possibly admit of certain exceptions, as where the applicant is sent abroad on a government mission, or kidnapped or forcibly removed from the Philippines was invoked. The Court, however, said that the present case does not come within any of these situations and that further relaxation of the requirement in deference to private need and convenience should be avoided so as not to open the door to fraud and render the law ineffectual.

The significance of Republic Act No. 530 was emphasized in *Tiu Peng Hong v. Republic*.[29] In this case the decision of the court of first instance granting the petition was rendered on July 30, 1952.

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24 Tui Peng Hong v. Republic, G.R. No. L-8580, January 25, 1956.
25 Republic Act No. 530.
26 Chan v. Republic, G.R. No. L-8913, July 24, 1956.
27 G.R. No. L-9097, February 29, 1956.
28 G.R. No. L-7054, April 29, 1955.
29 Ramon Cheng Quioc Too v. Republic, G.R. No. L-9341, December 14, 1956.

Two years thereafter the hearing was held and the petitioner took his oath of allegiance on October 19, 1956. Later he asked that his daughter who reached the age of majority on March 15, 1953 be allowed to take the oath of allegiance "as a confirmation of her intention to continue and retain her inchoate Philippine citizenship which was impressed upon her when herein petitioner filed his application for naturalization." It was argued that upon the expiration of thirty days from notice of the decision of July 30, 1952 and in view of the government's failure to appeal, the child automatically became a citizen. The Supreme Court gave three reasons for rejecting this theory. *First,* considering the provisions of section 2 Republic Act No. 530, an applicant becomes a citizen only upon the taking of the oath of allegiance and not before. The oath determines the beginning of his status as a regular member of our citizenry. *Second,* section 1 of the law provides that no decision granting an application for citizenship shall become executory until after two years from its promulgation and the court is satisfied that during the intervening period the applicant has complied with the conditions specified. *Third,* the theory of the petitioner would lead to the result that whereas the petitioner did not become a citizen till October 9, 1954 his daughter would become a citizen on or about September 9, 1952 or over two years before her father became naturalized. Hence, the accessory would come into existence long before the principal, upon which it is wholly dependent.

Rectification of official records is an issue foreign to the purposes of naturalization proceedings. An applicant who avers that he was born in the Philippines but presents a birth certificate which shows a different name allegedly entered through a mistake made by the person who reported his birth, has to wait until the final decision on the separate action he filed asking for correction of the entry. To grant him naturalization on the basis of his application as a Philippine-born alien would be premature, since the fact of his birth has not been established.[30]

Notwithstanding the rule of strictness in the application of our naturalization laws, the Supreme Court has indicated in a couple of decisions that applicants are not expected to accomplish the impossible. Thus, in *Pe v. Republic*[31] and *Esteban Lui (Kiong) v. Republic*[32] the Supreme Court said that although ordinarily the two witnesses whose affidavits support the declaration of intention should be presented at the hearing, where one of such witnesses died shortly before, a new witness may be substituted. The law has also been giv-

[30] G.R. Nos. L-7872-73, October 29, 1956.
[31] G.R. No. L-9107, October 31, 1956.
[32] G.R. No. L-8780, October 19, 1956.

en a reasonable application. *Yu Kong Eng v. Republic*[33] illustrates this. It is required among other things that an applicant be of good moral character and must have conducted himself in a proper and irreproachable manner during the entire period of his stay. In this case denial of the application was urged because the applicant had refused to accept dollar coins in his theater and had once refused to allow some policemen to enter in order to arrest a person whom they suspected to be a pickpocket. The Court said that this conduct was not a reflection on the applicant's character but showed an honest desire to protect business interests. The Court went even further to say that the applicant's conviction of minor traffic violations were not serious enough to render him unfit for citizenship. In another case[34] the court held that a judgment declaring that the applicant possessed all the qualifications and none of the disqualifications provided in the law, will not be set aside just because one of his witnesses made some unintelligent and unresponsive answers in the course of his examination. While the answers might reflect on the intelligence of that witness they do not necessarily destroy his credibility.

CIVIL SERVICE

Article XII of the Constitution provides not only for the establishment of a civil service embracing all branches and subdivisions of the governments but also for its protection and maintenance by prescribing rules regarding appointments, compensation, and security of tenure and prohibits partisan political activities on the part of officers in the civil service.

SECURITY OF TENURE

Does the Constitutional provision affecting tenure extend to officers in the unclassified civil service? If an officer is illegally dismissed can his right to recover the position be lost by inaction on his part? Both questions were answered in the affirmative in the case of *Unabia v. Mayor*[35] The case involved the dismissal of a foreman employed in the office of the city health officer. It was claimed that the Constitutional guarantees do not extend to him since his position belongs to the unclassified civil service[36] The Supreme Court in rejecting this contention said that the Constitution protects those

[33] Tin Bon Hui v. Republic, G.R. No. L-8730, November 19, 1956.
[34] G.R. No. L-8759, May 25, 1956.
[35] The Revised Administrative Code provides: "Persons embraced in the Philippine civil service pertain either to the classified or unclassified service. The classified service embraces all not expressly declared to be in the unclassified service." (§670) An enumeration of those persons included in the unclassified service is made in §671.
[36] 46 O.G. No. 8, 3693, 3695 (1949).

in the classified civil service as well as those in the unclassified service. The latter are so designated because their work and qualifications are not subject to classification but this is not a valid reason for denying them the privileges accorded to those in the classified civil service.

The second question appears to be of first impression. The Supreme Court while finding that the removal without cause was invalid held that reinstatement could not be ordered because failure to bring the action within one year from the illegal dismissal amounted to an abandonment of office. The officer illegally dismissed is not excused from taking steps for his protection. Adopting the period of time set for bringing quo warranto proceedings, the Supreme Court held that any person claiming the right to a position in the civil service should be required to file his petition for reinstatement within the period of one year, otherwise he is considered as having abandoned his office. Weighty reasons of public policy and convenience demand the adoption of the one year period observed in quo warranto proceedings to challenge the right to an office. Mr. Justice Bengzon's opinion in *Tumulak v Egay*[37] that "constitutional rights may certainly be waived, and the inaction of the officer for one year could validly be considered as a waiver, i.e., a renunciation which no principle of justice may prevent, he being at liberty to resign his position anytime he pleases" and that "it is not proper that the title to public office should be subjected to continued uncertainty and that the people's interest requires that such right should be determined as speedily as practicable" was quoted with approval. Another consideration for the adoption of this one year rule was that the government must be immediately informed if any person claims to be entitled to an office in the civil service as against another actually holding it, so that the government may not be faced with the predicament of having to pay two salaries, one to the person actually holding it, although illegally and another to one entitled to hold it although not actually holding the office.

DOUBLE COMPENSATION

The question of double compensation has time and again come up to the courts for determination. The constitution while not absolutely prohibiting it provides: "No officer or employee of the Government shall receive additional or double compensation unless specifically authorized by law."[37] That this provision does not refer to double appointments is shown in the case of *Quimson v. Ozaete.*[38] This was an action to recover accrued salaries brought by the deputy

[37] §3, Article XII.
[38] G.R. No. L-8321, March 26, 1956.

provincial treasurer and municipal treasurer of Caloocan, Rizal who had been appointed agent collector of the Rural Progress Administration in accordance with a resolution adopted by the board of directors of the administration upon recommendation of the comptroller. The defendant as then Secretary of Justice was chairman of the board of directors of the Rural Progress Administration. The plaintiff served as agent-collector until he was informed of the disapproval of his appointment. The Auditor General objected to the appointment on the ground that as the plaintiff was deputy provincial treasurer and municipal treasurer, his additional compensation as agent-collector would contravene the constitution. However, he expressed the opinion that under section 691 of the Revised Administrative Code the official who made the illegal appointment should be made liable for the salary of the employees. This action was thereafter brought against the chairman of the board of directors.

The law referred to provides:

> "Sec. 691. *Payment of person employed contrary to law.—Liability of chief of office.*—No person employed in the classified service contrary to law or in violation of the civil service rules shall be entitled to receive any pay from the Government; but the chief of the Bureau or Office responsible for such unlawful employment shall be personally liable for the pay that would have accrued had the employment been lawful, and the disbursing officer shall make payment to the employee of such amount from the salary of the officers so liable."

The Supreme Court held that the above provision refers to unlawful appointment and not to unlawful compensation. The appointment of the plaintiff was not in itself unlawful because there is not incompatibility between said appointment and his employment as treasurer. "There is no legal objection to a government official occupying two government offices and performing the functions of both as long as there is no incompatibility. "Clerks of court sometimes are appointed provincial sheriffs. Municipal treasurers like the plaintiff are often appointed deputy provincial treasurer. The department secretaries are often designated chairmen or members of boards of directors of government corporations. The court proceeded by saying:

> "According to law, under certain circumstances, the President may authorize double compensation in some cases, such as government officials acting as members with compensation in government examining boards like the Bar Examinations; or department secretaries acting as members of Boards of Directors of government corporations, and in such cases the prohibition against double compensation is not observed. x x x If the President approves the double compensation, well and good. The appointee whose appointment may then be regarded as valid from the beginning could receive extra compensation. If it is disapproved, then the appoint-

ment will be withdrawn or cancelled unless, of course, the appointee was willing to serve without compensation, in which case there could be no valid objection. This is another proof that the appointment of Quimson was not illegal or unlawful. It was only the double compensation that was subject to objection."[39]

SUSPENSION AND REMOVAL OF LOCAL OFFICIALS

The extent of the President's power over local officials was inquired into in the case of *Claravall v. Paraan*[40] which involved a Presidential Executive Order removing the chief of police of the City of Baguio. The appellant contended that section 2545 of the Revised Administrative Code giving the President power to remove at pleasure certain city officials must be deemed unconstitutional so far as it vests the power of removal in the President since under the Constitution he has only the power of general supervision and not of control over local governments. The Supreme Court reiterated its rule in the *De los Santos v. Mallare* case[41] to the effect that the provision giving the President power to remove at pleasure being inconsistent with the constitutional provisions of the civil service must be understood to have been repealed by the Constitution. Further than this the court refused to go; the proposition that "because the power over local governments vested by the Constitution in the Chief Executive is merely of general supervision, he cannot be granted power to remove the officers of such governments even for cause, was rejected. The court said that the power of the legislature to confer the removal power on the President is implicit in the phrase "as may be provided by law" that in the constitution follows and qualifies his right to "exercise general supervision over all local governments." The statutory grant, therefore, is the measure and the limit of the power of supervision; and the appellant according to the court has failed to point out any constitutional provision that would, expressly or by implication, restrain the legislature from conferring upon the President the power to remove officials of the City of Baguio in the exercise of his general supervisory power. While it is true, the court said, that the administrative code was enacted at a time when the American governors general exercised both supervi-

[39] The view has been advanced that the constitutional prohibition on double compensation "does not apply to a case of a person performing the functions of two distinct offices, each of which having its own duties and its own compensation and not incompatible with each other. In this case, the person occupying the two offices, 'is in the eye of the law two officers, or holds two places or appointments, the functions of which are separate and distinct, and according to all decisions, he is in such case entitled to recover the two compensations.'" (SINCO, PHILIPPINE POLITICAL LAW 429-430 [1954].) In the case of Quimson v. Ozaeta *supra*, this angle of the problem of double compensation was not, however, touched upon.

[40] G.R. No. L-9941, November 29, 1956.

[41] 48 O.G. No. 5, 1787 (1950).

sion and control over local governments, the failure of the legislature to alter or limit the executive powers granted by section 2545 after the constitution came into effect implies that the legislature still believes that those are powers necessary and appropriate for the Chief Executive's supervision over the City of Baguio.

In *Pulutan v. Dizon*[42] the Supreme Court held that the removal of a detective second lieutenant made by the mayor without cause violated the constitutional provision guaranteeing the security of tenure of officials in the civil service and a resolution of the municipal board abolishing the position of the official illegally removed not having been made in accordance with the provisions of a circular requiring previous approval by the department head was also invalid.[43]

[42] G.R. No. L-7746, May 23, 1956.

[43] The decisions in the last two cases reveal that a clear and unambiguous rule on the subject of supervision of local governments and local officials has yet to be formulated by our Supreme Court.